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Attorneys for Intervenor-Plaintiff Federal Housing Finance Agency

**UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA**

GREEN TREE SERVICING LLC,
 Plaintiff,

v.

NV EAGLES, LLC; SHADOW SPRINGS
 COMMUNITY ASSOCIATION,
 Defendants.

SHADOW SPRINGS COMMUNITY
 ASSOCIATION, a Nevada Non-Profit Corporation,
 Third-Party Plaintiff,

v.

RED ROCK FINANCIAL SERVICES, LLC, a
 foreign limited liability company,
 Third-Party Defendant.

NV EAGLES, LLC,
 Counterclaimant,

v.

GREEN TREE SERVICING LLC,
 Counterdefendant.

FEDERAL HOUSING FINANCE AGENCY, as
 Conservator of the Federal National Mortgage
 Association,

Intervenor-Plaintiff,

v.

NV EAGLES, LLC,
 Defendant.

CASE NO.: 2:15-cv-00590-RFB-GWF

**MOTION TO INTERVENE BY THE
 FEDERAL HOUSING FINANCE
 AGENCY**

1 Federal Housing Finance Agency (“FHFA”) moves to intervene to join this case as a
2 Plaintiff pursuant to this Court’s July 25, 2016 order. *See* ECF No. 69. FHFA does not concede
3 that it is a necessary party to this action and respectfully believes that Green Tree, as servicer for
4 Federal National Mortgage Association (“Fannie Mae”), has standing to assert that 12 U.S.C.
5 § 4617(j)(3) (the “Federal Foreclosure Bar”) protects the Fannie Mae lien at issue from
6 extinguishment. *See* FHFA’s Statement on Servicer Reliance on the Housing and Economic
7 Recovery Act of 2008 in Foreclosures Involving Homeownership Associations,
8 [http://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Authorized-Enterprise-](http://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Authorized-Enterprise-Servicers-Reliance.pdf)
9 [Servicers-Reliance.pdf](http://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/Authorized-Enterprise-Servicers-Reliance.pdf).

10 Nevertheless, pursuant to the Court’s order, FHFA, in its capacity as Conservator for Fannie
11 Mae, respectfully moves to intervene and submits its proposed complaint in intervention as an
12 exhibit to this Motion. *See* Ex. A.

13 DATED this 15th day of August, 2016.

14 Respectfully submitted,

15 /s/ Leslie Bryan Hart, Esq.
16 Leslie Bryan Hart, Esq. (SBN 4932)
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23 and

24 IT IS SO ORDERED:

25 

26 RICHARD F. BOULWARE, II
27 United States District Judge

28 DATED this 9th day of September, 2016.

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*Attorneys for Intervenor-Plaintiff Federal Housing
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CERTIFICATE OF SERVICE

Pursuant to F.R.C.P. 5(b) and Electronic Filing Procedure IV(B), I certify that on the 15th day of August, 2016, a true and correct copy of the **MOTION TO INTERVENE BY THE FEDERAL HOUSING FINANCE AGENCY**, was transmitted electronically through the Court's e-filing electronic notice system to the attorney(s) associated with this case. If electronic notice is not indicated through the court's e-filing system, then a true and correct paper copy of the foregoing document was delivered via U.S. Mail.

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An Employee of Fennemore Craig, P.C.

11922616.1/038236.0001

EXHIBIT INDEX

DESCRIPTION	EXHIBIT
[Proposed] Intervenor Complaint	A

Exhibit A

INTERVENOR COMPLAINT

Exhibit A

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NV EAGLES, LLC,
 Defendant.

CASE NO.: 2:15-cv-00590-RFB-GWF

**COMPLAINT BY THE FEDERAL
 HOUSING FINANCE AGENCY**

1 The Federal Housing Finance Agency (“FHFA”) in its capacity as Conservator for Fannie
 2 Federal National Mortgage Association (“Fannie Mae”), files this Complaint against Defendant NV
 3 Eagles, LLC and alleges the following:

4 **I. INTRODUCTION**

5 1. This action arises out of the Parties’ disputed rights in that certain real property
 6 commonly described as 6137 Talbot Springs Court, North Las Vegas, Nevada 89081, APN 124-25-
 7 615-051, (the “Property”), encumbered by a Fannie Mae lien.

8 2. FHFA seeks (1) a declaratory judgment that notwithstanding any contrary Nevada
 9 law, federal law prevents foreclosure of a homeowners association (“HOA”) lien from
 10 extinguishing a Fannie Mae or Conservator lien on a property while Fannie Mae is in FHFA
 11 conservatorship, and that therefore the Fannie Mae’s lien continued to encumber property at issue
 12 notwithstanding the HOA foreclosure sale, and (2) a quiet-title judgment recognizing the continued
 13 validity of the Fannie Mae’s lien.

14 3. In July 2008, Congress passed the Housing and Economic Recovery Act of 2008
 15 (“HERA”), Pub. L. No. 110–289, 122 Stat. 2654, *codified at* 12 U.S.C. § 4511 *et seq.* HERA
 16 includes an array of broad privileges, immunities, and exemptions from otherwise applicable law
 17 that facilitate the Conservator’s exercise of its statutory powers. Here, 12 U.S.C. § 4617(j)(3)
 18 mandates that while Fannie Mae and Freddie Mac are in conservatorship, none of their property
 19 “shall be subject to . . . foreclosure[] . . . without the consent of [FHFA].”

20 4. A Nevada statute provides HOAs with super-priority liens that HOAs may foreclose
 21 to recover up to nine months of delinquent HOA dues. Nev. Rev. Stat. § 116.3116(2). Nevada law
 22 allows HOAs to recover only up to six months of delinquent HOA dues where a Fannie Mae lien
 23 encumbers the property. *Id.* The Nevada Supreme Court has held that a foreclosure authorized and
 24 properly conducted under Nev. Rev. Stat. § 116.3116 can extinguish other interests in the
 25 underlying property, including deeds of trust. *SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d
 26 408 (Nev. 2014).

27 5. The Conservator has not consented to the extinguishment of Fannie Mae’s interest in
 28 any property that has been the subject of an HOA foreclosure sale.

IV. JURISDICTION AND VENUE

12. This action seeks declaratory and injunctive relief under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, including but not limited to a declaration under Nevada’s quiet-title statute, Nev. Rev. Stat. § 40.010.

13. The Court has subject matter jurisdiction over this matter pursuant to at least two statutory provisions:

- 28 U.S.C. § 1332, because FHFA is a “citizen[] of [a] different state[]” than NV Eagles, and “the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs”; and
- 28 U.S.C. § 1331, because the claims asserted “aris[e] under the Constitution [and] laws . . . of the United States.”

14. Venue lies in the U.S. District Court for the District of Nevada pursuant to 28 U.S.C. § 1391, because NV Eagles is a Nevada domestic limited-liability company, and a substantial part of the events or omissions giving rise to the claims occurred in this District.

15. This Court may assume and exercise in rem jurisdiction over the property at issue here as it is not the subject of Nevada state court litigation.

16. The Court has personal jurisdiction over NV Eagles because this lawsuit arises out of and is connected with NV Eagles’ purposeful purchase of interests in property located in Nevada. Moreover, NV Eagles is a Nevada domestic limited-liability company with its principal place of business in the state of Nevada.

V. FACTUAL ALLEGATIONS

17. On or about November 4, 2004, James H. Urello entered into a mortgage loan transaction (the “Loan”) in which he borrowed \$224,300.00 from KB Home Mortgage Company (“KB Home”), evidenced by a Note (the “Note”) and secured by a Deed of Trust (the “Deed of Trust”) encumbering the Property.

18. The Property is subject to a declaration of covenants, conditions, and restrictions for the Shadow Springs Community Association (“Shadow Springs HOA”).

19. The Deed of Trust was recorded on November 12, 2004 and showed James H. Urello as the borrower, KB Home as the Lender, and Mortgage Electronic Registration Systems, Inc.

1 (“MERS”) as nominee for KB Home and its successors and assigns and as the beneficiary of the
2 Deed of Trust.

3 20. Fannie Mae purchased the loan for which the Property served as collateral on or
4 about December 1, 2004, and the Deed of Trust for that loan encumbered the Property at the time of
5 the HOA foreclosure sale.

6 21. On or about May 20, 2010, a Corporation Assignment of Deed of Trust was recorded
7 whereby MERS, as nominee, assigned the Deed of Trust to BAC Home Loans Servicing, LP fka
8 Countrywide Home Loans Servicing, LP.

9 22. On or about February 16, 2012, an Assignment of Deed of Trust was recorded as
10 whereby MERS, as nominee, assigned the Subject Deed of Trust to Bank of America, N.A.,
11 Successor by Merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing,
12 LP.

13 23. On or about May 05, 2009, Red Rock Financial Services (“Red Rock”), as agent for
14 Shadow Springs HOA, recorded a notice of lien on the Property for delinquent HOA dues.

15 24. On or about June 18, 2009, Red Rock, as agent for Shadow Springs HOA, filed a
16 notice of default and election to sell under homeowners’ association lien.

17 25. On or about May 01, 2013, Red Rock, as agent for Shadow Springs HOA, recorded a
18 notice of sale.

19 26. The HOA foreclosure sale was held on or about May 30, 2013, and Red Rock, as
20 agent for Shadow Springs HOA, sold the Property to Underwood Partners LLC (“Underwood”) for
21 \$21,000.00.

22 27. On or about November May 30, 2013, Red Rock, as agent for Shadow Springs HOA,
23 recorded a foreclosure deed that transferred the Property to Underwood.

24 28. On or about August 22, 2014, Underwood recorded a grant, bargain, sale deed that
25 transferred the Property to NV Eagles.

26 29. At no time did Shadow Springs HOA, Red Rock, Underwood, NV Eagles, or any
27 other party seek or obtain consent from FHFA to extinguish Fannie Mae’s interest in the Property.
28

30. At no time did FHFA consent to extinguishment of Fannie Mae’s interest in the Property.

VI. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION **(Declaratory Relief)**

31. FHFA reasserts and incorporates herein by reference the allegations contained in ¶¶ 1–30 above, as though fully set forth herein.

32. Pursuant to 28 U.S.C. § 2201 and Nev. Rev. Stat. § 40.010, this Court is empowered to declare the rights and legal relations of the parties in this matter, both generally and in relation to the HOA foreclosure sale and the Property.

33. The Deed of Trust was the first secured interest on the Property and Fannie Mae held an interest in the Deed of Trust.

34. FHFA, Conservator of Fannie Mae, is an independent agency of the federal government. *See* 12 U.S.C. § 4511(a).

35. Upon its appointment, the Conservator succeeded by law to all of Fannie Mae’s “rights, titles, powers, and privileges.” *Id.* § 4617(b)(2)(1)(A)(i).

36. During the conservatorship, “[n]o property of [FHFA] shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of [FHFA], nor shall any involuntary lien attach to the property of [FHFA].” *Id.* § 4617(j)(3).

37. Fannie Mae’s liens are property of the Conservator. *See, e.g., Skylights*, 112 F. Supp. 3d at 1155 (“[T]he property of Fannie Mae effectively becomes the property of FHFA once it assumes the role of conservator, and that property is protected by section 4617(j)’s exemptions.”); *Premier One*, 2015 WL 4276169, at *3 (“Fannie Mae has held an interest in the Property since [it purchased the associated mortgage] on December 1, 2006.”); *Williston*, 2015 WL 4276144, at *3 (“Freddie Mac has held an interest in the Property since” it purchased the associated mortgage and, therefore, “FHFA held an interest in the Deed of Trust as conservator for Freddie Mac”).

38. Applying Chapter 116 of the Nevada Revised Statutes or other state law in a manner that would have extinguished Fannie Mae's first position Deed of Trust violates 12 U.S.C. § 4617(j)(3).

39. FHFA did not consent to any purported extinguishment of Fannie Mae's Deed of Trust that encumbered the Property. *See* FHFA's Statement on HOA Super-Priority Lien Foreclosures (Apr. 21, 2015), www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx.

40. Pursuant to 12 U.S.C. § 4617(j)(3), the HOA foreclosure sale could not extinguish Fannie Mae's first secured interest. FHFA is entitled to a declaration that 12 U.S.C. § 4617(j)(3) preempts any state law that would permit an HOA foreclosure sale to extinguish a first secured interest of Fannie Mae while it is under FHFA's conservatorship.

41. FHFA is entitled to a declaration that the HOA foreclosure sale discussed herein did not affect or extinguish Fannie Mae's Deed of Trust.

42. FHFA has been compelled to retain the undersigned counsel to represent them in this matter and have and will continue to incur attorneys' fees and costs.

SECOND CAUSE OF ACTION
(Quiet Title)

43. FHFA reasserts and incorporates herein by reference the allegations contained in ¶¶ 1–42 above, as though fully set forth herein.

44. Pursuant to 28 U.S.C. § 2201 and Nev. Rev. Stat. § 40.010, this Court is empowered to declare the rights and legal relations of the parties in this action, both generally and in relation to the HOA foreclosure sale and the Property.

45. NV Eagles claim interests in the Property through the HOA foreclosure sale and deeds that are adverse to Fannie Mae's interest in the Property.

46. Fannie Mae's interests in the deed of trust that encumbered the Property constitutes interests in real property.

5. That the Court award such other and further relief as it may deem appropriate.

DATED this 15th day of August, 2016.

Respectfully submitted,

/s/ Leslie Bryan Hart, Esq.

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